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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,723	02/25/2002	Burton H. Birnbaum	1120-8	3962

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EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,723

Applicant(s)

BIRNBAUM ET AL

Examiner

Kristen Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/11/05 (Response).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-89 is/are pending in the application.
- 4a) Of the above claim(s) 26-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dempsey et al. (5,417,222) in view of Fox et al. (6,308,099).

Regarding claim 1, Dempsey shows a method comprising the steps of: initiating a connect mode in the wearable heart rate monitor (10); initiating transfer software in the portable computer device (12); transferring the information between the heart rate monitor and the portable computer device through the communication link (40,42), the information including setting information adapted to program the wearable heart rate monitor; and processing the heart rate information in the portable computer device (Col. 3, lines 52-58; Col. 6, line 48-Col. 7, line 46). Although Dempsey fails to show transferring the setting information bidirectionally, attention is directed to Fox which shows a telemetry system that bidirectionally transfers setting information between a monitor and a portable computer device. Fox teaches that it is necessary for the monitor to send its parameters to the portable computer device so that the portable computer can verify the current parameters before sending modified parameters in order to avoid any conflicts between multiple portable computers programming the same monitor. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the device of Dempsey to include transferring the setting information bidirectionally

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as Fox teaches in order to avoid any conflicts between multiple portable computers programming the same monitor.

With respect to claim 2, Dempsey et al. further shows the step of processing further includes the step of displaying the processed information on the portable computer device (Col. 7, lines 7-17).

Regarding claim 4, Dempsey et al. further shows connecting a first wireless communication interface (42) to the portable computer device (12) and a second wireless communication interface (40) to the heart rate monitor (10) (Fig. 1).

With respect to claim 5, Dempsey et al. further shows the step of maintaining at least one of a physical location between and an orientation of at least one of the heart rate monitor and the portable computer device during the transfer of the information (Fig. 1).

Regarding claims 6-7, Dempsey et al. shows the portable computer (10) is a personal digital assistant (PDA) and the information is heart rate information

With respect to claim 8, Dempsey et al further shows wherein the step of transferring the information between the heart rate monitor and the portable computer device includes at least one of the steps of uploading the information from the portable computer device to the heart rate monitor and downloading the information from the heart rate monitor to the portable computer device (Col. 6, line 48-Col. 7, line 46).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dempsey et al. (5,417,222) in view of Fox et al. (6,308,099). Dempsey and Fox are as explained before, however, Dempsey and Fox fail to show utilizing Bluetooth for the wireless communication link. It would have been obvious to one with ordinary skill in the art at the time the invention was

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made to employ Bluetooth for the IR or RF communication link of Dempsey and Fox wherein so doing would amount to mere substitution of one functional equivalent for another that would work equally well on the Dempsey and Fox device.

4. Claims 1-2, and 4-5, 7-17, and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (5,113,869) in view of Fox et al. (6,308,099).

Regarding claim 1, Nappholz shows a method comprising the steps of: initiating a connect mode in the wearable heart rate monitor (10); initiating transfer software in the portable computer device (20); transferring the information between the heart rate monitor and the portable computer device through the communication link (120); and processing the heart rate information in the portable computer device (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43). Although Nappholz fails to show transferring the setting information bidirectionally, attention is directed to Fox which shows a telemetry system that bidirectionally transfers setting information between a monitor and a portable computer device. Fox teaches that it is necessary for the monitor to send its parameters to the portable computer device so that the portable computer can verify the current parameters before sending modified parameters in order to avoid any conflicts between multiple portable computers programming the same monitor. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the device of Nappholz to include transferring the setting information bidirectionally as Fox teaches in order to avoid any conflicts between multiple portable computers programming the same monitor.

Assuming arguendo that the heart rate monitor of Nappholz is not wearable, the heart rate monitor of Nappholz is indeed wearable internally. The claim language does not require that the heart monitor to be externally wearable.

With respect to claim 2, Nappholz et al. further shows the step of processing further includes the step of displaying the processed information on the portable computer device (Col. 20, lines 10-12).

Regarding claim 4, Nappholz et al. further shows connecting a first wireless communication interface to the portable computer device (20) and a second wireless communication interface to the heart rate monitor (10) (Fig. 10).

With respect to claim 5, Nappholz et al. further shows the step of maintaining at least one of a physical location between and an orientation of at least one of the heart rate monitor and the portable computer device during the transfer of the information (Col. 7, lines 17-18; Col. 16, lines 48-51).

Regarding claim 7, Nappholz et al. shows the information is heart rate information

With respect to claim 8, Nappholz et al further shows wherein the step of transferring the information between the heart rate monitor and the portable computer device includes at least one of the steps of uploading the information from the portable computer device to the heart rate monitor and downloading the information from the heart rate monitor to the portable computer device (Col. 4, line 61-Col. 5, line 2; Col.7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

Regarding claims 9-10, Nappholz et al. shows the step of initiating transfer software in the portable computer device includes the step of initiating transfer setting information software

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in the portable computer device, and initiating transfer heart rate/training information software in the portable computer device (Col. 4, line 61-Col. 5, line 2; Col.7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

With respect to claim 11-12, wherein the step of transferring the information between the heart rate monitor and the portable computer device includes the steps of: initiating an upload setting information mode in the portable computer device, uploading setting information from the portable computer device to the heart rate monitor; and returning the heart rate monitor to a normal mode in response to completion of the upload of the setting information and initiating a download setting information mode in the portable computer device, downloading setting information from the heart rate monitor to the portable computer device; and initiating a normal mode in the heart rate monitor in response to completion of the download of the setting information (Col. 4, line 61-Col. 5, line 2; Col.7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

Regarding claim 13, Nappholz et al. shows initiating a batch heart rate/training information transfer mode in the portable computer device; transferring batch (burst) heart rate/training information from the heart rate monitor to the portable computer device; and returning the heart rate monitor to a normal mode in response to completion of the batch transfer of the heart rate/training information (Col. 12, lines 21-26).

With respect to claim 14, Nappholz et al. shows the step of transferring batch heart rate/training information includes the steps of: initiating wireless communication with the heart rate monitor by the portable computer device; requesting heart rate monitor information from the heart rate monitor by the portable computer device; transferring the heart rate monitor

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information from the heart rate monitor to the portable computer device; requesting file information from the heart rate monitor by the portable computer device; transferring the file information from the heart rate monitor to the portable computer device; requesting heart rate information from the heart rate monitor by the portable computer device; transferring the heart rate information from the heart rate monitor to the portable computer device; and storing the heart rate information in the portable computer device (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

Regarding claim 15, Nappholz et al. shows the step of initiating wireless communication with the heart rate monitor by the portable computer device includes the step of initializing a serial port on the portable computer device (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

With respect to claim 16, Nappholz et al. shows the step of requesting file information from the heart rate monitor by the portable computer device includes at least one of the steps of verifying whether the heart rate information has been substantially completely transferred to the portable computer device in the form of files, specifying the index of at least one of the transferred files to be processed by the portable computer device, and requesting information associated with at least one of the transferred files (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

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Regarding claim 17, Nappholz et al. shows the step of transferring the file information from the heart rate monitor to the portable computer device includes the step of transferring information associated with at least one of the transferred files (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

With respect to claim 20, Nappholz et al. shows the step of terminating wireless communication with the heart rate monitor by the portable computer device.

Regarding claims 21-22, Nappholz et al. shows the step of processing the heart rate information by the portable computer device including the step of performing graphical analysis.

With respect to claim 23, Nappholz et al. shows the step of calculating an average heart rate (Col. 10, lines 27-34).

With respect to claim 24, Nappholz et al. shows the step of synchronizing the transfer of heart rate information with a program on the portable computer device

Regarding claim 25, Nappholz et al. shows the step of transferring the information between the heart rate monitor and the portable computer device includes the steps of: initiating a real-time heart rate/training information transfer mode in the portable computer device, transferring heart rate/training information from the heart rate monitor to the portable computer device in substantially real-time; and returning the heart rate monitor to a normal mode in response to completion of the substantially real-time transfer of the heart rate/training (Col. 4, line 61-Col. 5, line 2; Col. 7, line 12-25; Col. 10, lines 27-34; Col. 12, line 18-26; Col. 16, line 1-Col. 17, line 55; Col. 19, line 7-Col. 21, line 43).

Response to Arguments

5. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

6. Claims 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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